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Filing date: **04/19/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202898
Party	Defendant Mikhail Levitin T/A Mikhail Levitin Institute
Correspondence Address	MIKHAIL LEVITIN PO BOX 102 REEDERS, PA 18352-0102 UNITED STATES vitality@ptd.net
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Mikhail Levitin
Filer's e-mail	vitality@ptd.net
Signature	/Mikhail Levitin/
Date	04/19/2012
Attachments	Binder1.pdf ( 5 pages )(32666 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

L'Oréal S.A. and L'Oréal USA, INC.,  
Opposer,

In the Matter of Application  
Serial No: 85/270,272

vs.

Re: Mark: FOREAL FOR'EAL  
BY MIKHAIL

MIKHAIL LEVITIN T/A  
MIKHAIL LEVITIN INSTITUTE,  
Applicant

Motion

April 19, 2012

In this action Applicant shows that there is no genuine dispute as to any material fact and the Applicant is entitled to judgment as a matter of law and filed this motion to dismiss the Opposer's actions on the conditions stated in Rule 12 (c) supported by the evidence, and the motion may be treated as a motion to dismiss for failure of the complaint to state a claim on which relief can be granted on the undisputed facts as disclosed by the evidence, and the motion may be treated as a motion for summary judgment, and if it does not exclude such matter, the motion should be treated as a motion for summary judgment and disposed of in the manner and on the conditions stated in Rule 56 relating to summary judgments, and when the case reaches the circuit court of appeals, that court should treat the motion in the same way. *Samara v. United States* (C.C.A.2d, 1942) 129 F.(2d) 594, cert. den. (1942) 317 U.S. 686; *Boro Hall Corp. v. General Motors Corp.* (C.C.A.2d, 1942) 124 F.(2d) 822, cert. den. (1943) 317 U.S. 695. See also *Kithcart v. Metropolitan Life Ins. Co.* (C.C.A.8th, 1945) 150 F.(2d) 997, aff'g 62 F.Supp. 93.

Factual Background:

On 03/17/2011 USPTO received the Applicant's submission of the application and assigned to it a serial number '85270272'.

According to the Trademark Electronic Application System (TEAS) filing receipt:

MARK: FOREAL Foréal by Mikhail (Standard Characters, mark.jpg)

The literal element of the mark consists of FOREAL Foréal by Mikhail.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

Declaration Signature

Signature: /Mikhail Levitin/ Date: 03/17/2011

Signatory's Name: Mikhail Levitin

Signatory's Position: owner.

On 12/08/2011 Notice of Opposition to Application No. 85270272 has been filed in the UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board with respect to the application and has been issued an opposition No. 91202898.

Re: Mark: FOREAL FOR'EAL BY MIKHAIL

Filing receipt

The summary of the application data No. 85270272 serves as the official filing receipt.

The copy of the application is incorporated by the references and respectfully attached for the review.

Conclusion

In the motion for judgment on the pleadings now before the Board, Applicant argues that Opposer has no actions on the pleading due to the distinguishing features between the Applicant's mark:

FOREAL Foréal by Mikhail where:

- The first word "FOREAL" has all letters in capital;
- The second word "Foréal" has only first letter capital and the rest letters are small;
- The third word "by" has only small letters;
- The forth word "Mikhail" has only first letter capital and the rest letters are small;

The Opposer filed the case against alleged Applicant's mark:

FOREAL FOR'EAL BY MIKHAIL, where all letters in all words are capital and so distinguish from the mark filed in the application No. 85270272.

AND NOW, Applicant is pleading to the Board to consider the motion for judgment, and in accordance with the accompanying filing receipt, it is hereby requested that:

1. The motion is GRANTED in favor of defendant MIKHAIL LEVITIN T/A MIKHAIL LEVITIN INSTITUTE, Applicant and against plaintiff L'Oréal S.A. and L'Oréal USA, INC., Opposer, and

2. This action against the Applicant is DISMISSED.

Respectfully submitted,

By: /Mikhail Levitin/  
Mikhail Levitin  
P.O. Box 102  
Reeders, PA 18352  
(570) 872-7962

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2012, a true and complete copy of the foregoing

MOTION to dismiss the Opposer's actions on the conditions stated in Rule 12 (c), the motion to dismiss for failure of the complaint to state a claim on which relief can be granted on the undisputed facts as disclosed by the evidence, and the motion for summary judgment, stated in Rule 56

has been served on Opposer electronically, as agreed upon by the parties, by sending this copy by e-mail to Natalie Furman, Associate, Litigation Department at [nataliefurman@paulhastings.com](mailto:nataliefurman@paulhastings.com).

/Mikhail Levitin/  
Mikhail Levitin

## Trademark Electronic Application System (TEAS) filing receipt

**MARK:** FOREAL Foréal by Mikhail (Standard Characters, mark.jpg)

The literal element of the mark consists of FOREAL Foréal by Mikhail.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

We have received your application and assigned serial number '85270272' to your submission. The summary of the application data, *bottom below*, serves as your official filing receipt.

In approximately 3 months, an assigned examining attorney will review your application to determine if all legal requirements are met. Currently, your mark is **not** registered and is considered a "pending" application. The overall process from the time of initial filing to registration or final refusal can take 13-18 months or even longer, depending on many factors; *e.g.*, the correctness of the original filing and the type of application filed. It is **CRITICAL** that you check the status of your application **at least every 3 - 4 months** and promptly contact the Office if a letter (an "Office action") or notice has issued for your application that you did not receive or do not understand. To check the status, please use <http://tarr.uspto.gov>. Do **not** submit status requests to [TEAS@uspto.gov](mailto:TEAS@uspto.gov). Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

Please view all incoming and outgoing correspondence at <http://portal.uspto.gov/external/portal/tow>. If your status check reveals an issued Office action or notice that you did not receive, immediately view the action/notice through the USPTO website. The USPTO does not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must ensure that you update your record if your mail and/or e-mail address changes, using the form available at <http://www.uspto.gov/teas/eTEASpageE.htm>.

If you discover an error in the application data, you may file a Voluntary Amendment, at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the technical support team may not make any data changes. **NOTE:** You must wait approximately 7-10 days to submit any Voluntary Amendment, to permit initial upload of your serial number into the USPTO database. The acceptability of any Voluntary Amendment will only be determined once regular examination begins, since the assigned examining attorney must decide whether the change proposed in the amendment is permissible. **Not all errors may be corrected;** *e.g.*, if you submitted the wrong mark, if the proposed correction would be considered a material alteration to your original filing, it will not be accepted, and your only recourse would be to file a new application (with **no** refund for your original filing).

Since your application filing has already been assigned a serial number, please do **not** contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request cancellation. The USPTO will only cancel the filing and refund your fee if upon review we determine that the application did not meet minimum filing requirements. **The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.** **NOTE:** The only "exception" to the above is if you inadvertently file duplicate applications specifically because of a *technical glitch* and not merely a misunderstanding or mistake; *i.e.*, if you believe that the first filing did not go through because no confirmation was received and

then immediately file again, only to discover later that both filings were successful, then the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov) can mis-assign and refund one of the filings.

**WARNING:** You may receive unsolicited communications from companies requesting fees for trademark related services, such as monitoring and document filing. Although solicitations from these companies frequently display customer-specific information, including USPTO serial number or registration number and owner name, companies who offer these services are not affiliated or associated with the USPTO or any other federal agency. The USPTO does not provide trademark monitoring or any similar services. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult the USPTO website.

**APPLICATION DATA: Trademark/Service Mark Application, Principal Register TEAS Plus Application**

The applicant, Mikhail Levitin, TA Mikhail Levitin Institute, a citizen of United States, having an address of

P. O. Box 102,  
1349 Mountain Springs Dr.  
Reeders, Pennsylvania 18352  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 003: Anti-aging cream

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

For informational purposes only, applicant's website address is: [www.tuneup.org](http://www.tuneup.org)

The applicant's current Correspondence Information:

Levitin, Mikhail  
P. O. Box 102  
1349 Mountain Springs Dr.  
Reeders, Pennsylvania 18352  
570.620.1024(phone)  
570.620.2017(fax)  
vitality@ptd.net (authorized)

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).